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Attorneys for Plaintiff Big Sky Brewing Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BIG SKY BREWING COMPANY, Plaintiff, vs. ANHEUSER-BUSCH, LLC; ANHEUSER-BUSCH COMPANIES, LLC; and ANHEUSER-BUSCH, INCORPORATED, Defendants.	Civil Action No. _____ COMPLAINT FOR INFRINGEMENT, INJUNCTIVE RELIEF AND DEMAND FOR JURY TRIAL
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Plaintiff Big Sky Brewing Company ("Big Sky"), for its complaint against Defendants Anheuser-Busch, LLC; Anheuser-Busch Companies, LLC; and Anheuser-Busch, Incorporated (collectively "Anheuser-Busch"), hereby alleges as follows:

JURISDICTION AND VENUE

1. This is an action seeking injunctive relief and monetary damages against Anheuser-Busch for infringement of Big Sky's HOLD MY BEER AND WATCH THIS mark for beer (U.S. Reg. No. 3,679,052) under the Lanham Act of

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the United States, more particularly 15 U.S.C. § 1114, and unfair competition under common law.

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §§ 1114 and 1116.

3. Venue is proper in the District of Montana, Missoula Division pursuant to 28 U.S.C. § 1391(c) and Local Rule 1.2(c)(5) in that Big Sky is incorporated in the State of Montana and maintains and operates a brewery in Missoula County, Montana. Anheuser-Busch has had, and continues to have, substantial contacts with the State of Montana; Anheuser-Busch conducts business in this district by purposefully advertising and selling substantial dollar amounts of product under its various registered such as BUD LIGHT in the State of Montana. Anheuser-Busch is subject to personal jurisdiction in the State of Montana.

THE PARTIES

4. Plaintiff Big Sky Brewing Company is a corporation organized under the laws of the State of Montana with its principal offices located at 5417 Trumpeter Way, Missoula, Montana.

5. Big Sky is a craft brewer engaged in the production, distribution and sale of brewed alcoholic beverages, namely beer. Big Sky currently sells to distributors in the 24 states of Alaska, Arizona, California, Colorado, Idaho, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming (“Big Sky’s Territory”). Big Sky also sells promotional and gift merchandise including, without limitation, shirts, jackets, t-shirts, golf shirts, glassware, decorative items and other memorabilia.

6. Defendant Anheuser-Busch, LLC is a limited liability company organized under the laws of the State of Missouri. Defendant Anheuser-Busch

Companies, LLC is a limited liability company organized under the laws of the State of Missouri. Defendant Anheuser-Busch, Incorporated is a corporation organized under the laws of the State of Missouri. All three Anheuser-Busch have their principal place of business at 1 Busch PL, Saint Louis, Missouri 63118-1852.

7. Anheuser-Busch's business includes the distribution and sale of brewed alcoholic beverages, including beer that is sold in Montana and throughout the United States, and the sale of promotional and gift merchandise.

BACKGROUND FACTS

8. Plaintiff Big Sky uses the slogan HOLD MY BEER AND WATCH THIS in conjunction with the advertisement, promotion and sale of its beer products. Such uses include, without limitation, on Big Sky's events trailer, glassware, growlers, clothing, coasters, posters, cozies, and beer cans.

9. Big Sky has been using the slogan HOLD MY BEER AND WATCH THIS in interstate commerce since at least as early as February 24, 2004.

10. On September 8, 2009, Big Sky obtained a trademark registration on the Principal Register of the U.S. Patent and Trademark Office for the HOLD MY BEER AND WATCH THIS mark. See U.S. Registration No. 3,679,052l; Registration Date: September 8, 2009 attached hereto as **Exhibit A**. Big Sky uses the notice of registration, "®," with its HOLD MY BEER AND WATCH THIS mark pursuant to 15 U.S.C. § 1111. Big Sky's uses of the HOLD MY BEER AND WATCH THIS mark have used the "™" or "®" disclaimers.

11. Big Sky has specifically placed the slogan on its BIG SKY I.P.A beer, which is sold in all 24 states of Big Sky's Territory:



12. On or about December 1, 2013, Big Sky became aware that Anheuser-Busch had hired actor, director and comedian John Krasinski to produce videos for branded entertainment featuring Anheuser-Busch's BUD LIGHT beer. Branded entertainment, which marries marketing and programming, is also known as branded content or content marketing.

13. Indeed, YouTube user "officialbudlight" uploaded three videos using the slogan HOLD MY BEER AND WATCH THIS depicting and promoting BUD LIGHT beer by Anheuser-Busch. All three videos were published to YouTube on December 1, 2013 by "John Krasinski (creator) and BudLight showcase what happens when you ask someone to #holdmybeer". The videos were entitled and have received to date significant views – over 3,250,000 views – as follows:

- a. "#holdmybeer – 1. Push-Ups" – 1,268,676 views;
- b. "#holdmybeer – 2. BBQ" – 1,086,270 views; and
- c. "#holdmybeer – 3. Nana" – 899,135 views.

See screen prints of the above videos taken December 19, 2013, and attached as **Exhibit B**.

14. On December 9, 2013, Big Sky forwarded a letter to Anheuser-Busch
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demanding that it cease and desist using the HOLD MY BEER AND WATCH THIS in connection with any advertising campaign or any other use related to any beer or beer-related products. A copy of this demand letter is attached as **Exhibit C**. Anheuser-Busch has failed to comply with the demand.

COUNT I: TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

15. Plaintiff Big Sky realleges and incorporated herein by reference the matters alleged in the paragraphs set forth above.

16. Prior to Anheuser-Busch's adoption and use of the HOLD MY BEER AND WATCH THIS slogan, Anheuser-Busch either had actual notice and knowledge, or constructive notice (pursuant to 15 U.S.C. § 1072), of Big Sky's ownership and registrations of the HOLD MY BEER AND WATCH THIS mark.

17. On information and belief, Anheuser-Busch has used the HOLD MY BEER AND WATCH THIS mark as trademarks and trade names in interstate commerce, including in this judicial district.

18. On information and belief, the goods and services offered and/or sold by Anheuser-Busch using the HOLD MY BEER AND WATCH THIS mark are moving and will continue to move through the same channels of trade, and are being offered and/or sold through the same channels of advertising and to the same consumer groups, as the goods and services that are offered and sold by Big Sky under the HOLD MY BEER AND WATCH THIS mark.

19. Big Sky has not consented to Anheuser-Busch's use of the HOLD MY BEER AND WATCH THIS mark.

20. Anheuser-Busch's unauthorized use of the HOLD MY BEER AND WATCH THIS mark as a major advertising campaign falsely indicates to consumers that Anheuser-Busch's goods and/or services are in some manner connected with, sponsored by, affiliated with, or related to Big Sky.

21. Anheuser-Busch's unauthorized use of HOLD MY BEER AND WATCH THIS mark also is likely to cause consumers to be confused as to the source, nature and quality of the goods that Anheuser-Busch is selling in connection with the HOLD MY BEER AND WATCH THIS mark.

22. Anheuser-Busch's unauthorized use of the HOLD MY BEER AND WATCH THIS mark deprives Big Sky of the ability to control the consumer perception of the quality of the goods marketed under the HOLD MY BEER AND WATCH THIS mark, and instead, places Big Sky's valuable reputation and goodwill into the hands of Anheuser-Busch, over whom Big Sky has no control.

23. The aforementioned activities of Anheuser-Busch are likely to cause confusion or mistake, or to deceive consumers or potential consumers wishing to purchase Big Sky's products.

24. The aforementioned acts of Anheuser-Busch constitute federal trademark infringement in violation of 15 U.S.C. § 1114.

25. Big Sky has been, is now, and will be irreparably harmed by Anheuser-Busch's aforementioned acts of infringement, and unless enjoined by the Court, Anheuser-Busch will continue to infringe upon the HOLD MY BEER AND WATCH THIS mark. There is no adequate remedy at law for the harm caused by the acts of infringement alleged herein.

26. In addition to injunctive relief, Big Sky is entitled to damages in amount to be proven at trial, including recovery of Defendants' profits, any damages sustained by Big Sky, and costs of this action.

WHEREFORE, Plaintiff Big Sky Brewing Company respectfully prays for relief as follows:

A. Entry of an order and judgment requiring that Defendants, their officers, agents, servants, employees, owners and representatives, and all other

persons, firms or corporations in active concert or participation with them, be preliminarily and thereafter permanently enjoined and restrained from (a) using in any manner the HOLD MY BEER AND WATCH THIS mark, or any name, mark or domain name that wholly incorporates the HOLD MY BEER AND WATCH THIS mark or is confusingly similar to or a colorable imitation of this mark; and (b) doing any act or thing calculated or likely to cause confusion or mistake in the minds of members of the public, or prospective customers of Big Sky's products, as to the source of the products offered, distributed or sold by Defendants, or likely to deceive members of the public or prospective customers into believing that there is some connection between Defendants and Big Sky;

B. A judgment ordering Defendants, pursuant to 15 U.S.C. §1116(a), to file with this Court and serve upon Big Sky within thirty (30) days after entry of the injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction and implemented adequate and effective means to either discontinue doing business and/or discontinue offering or selling goods bearing or using the HOLD MY BEER AND WATCH THIS mark;

C. A judgment requiring, pursuant to 15 U.S.C. § 1117, that Defendants account for and disgorge to Big Sky all of the profits realized by Defendants and all others acting in active concert or participation with Defendants, relating to the use of the HOLD MY BEER AND WATCH THIS mark, and, as the Court may deem appropriate and just in this regard, any additional amounts pursuant to 15 U.S.C. § 1117;

D. A judgment that Big Sky recover the costs of this action, plus interest; and

E. A judgment granting Big Sky such other and further relief as the

Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

DATED this 20th day of December 2013.

/s/ Shane A Vannatta

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